

NTSB Order No. EA-4551

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 21st day of May, 1997

Respondent.

Docket SE-14486

Respondent has appealed from the oral initial decision of Administrative Law Judge William A. Pope, II, issued on September 24, 1996, following an evidentiary hearing.¹ The law judge affirmed an emergency revocation order of the Administrator, on finding that respondent had violated 14 C.F.R. 61.3(c), 61.53, and 91.13(a).² We deny the appeal.³

² Section 61.3(c) provides, as pertinent, that no person may act (continued...)

On November 28, 1995, respondent presented himself at the office of Dr. David Hudson for an FAA physical and issuance of a new medical certificate. Respondent's certificate did not expire until May 1.⁴ During the physical, Dr. Hudson discovered a seriously irregular heartbeat, called the paramedics, and admitted respondent to the hospital. Dr. Hudson testified that, while they were waiting for the ambulance to arrive to take respondent to the hospital, he advised respondent that he could not fly and that the condition would prevent flying until at least it was controlled and then reviewed by the FAA. Tr. at 30-31. The next day, he testified, respondent's son told him how upset respondent was about not flying. Again, Dr. Hudson said the FAA would have to evaluate respondent's condition before he could fly again. Tr. at 33. Dr. Hudson was kept advised by the consulting cardiologist about respondent's condition (respondent

(continued...)

as pilot in command without a current medical certificate in his possession. Section 61.53 provides that no person may act as pilot in command while he has a known medical deficiency that would make him unable to meet the requirements for his current medical certificate. Section 91.13(a) prohibits careless or reckless operations that endanger the life or property of another.

³ Respondent has waived application of the statutory deadline applicable to emergency proceedings.

⁴ Respondent testified that he sought a new certificate because his existing one was in tatters (part was missing) and the date part was either missing or illegible and he was not sure when he was due for renewal. Tr. at 128. Counsel for the Administrator hypothesized that respondent knew he could get a copy of his certificate rather than a new one, and that he went to the doctor really because he was worried or knew something was physically wrong with him.

was kept in the hospital some time, and released with medication and the possibility of surgery to install a pacemaker. Exhibit A-1.). On January 21, 1996, Dr. Hudson wrote to respondent seeking an update on his condition, and offered the hope that "consideration can be given to re-assessing you in the not too distant future to enable you to return to flying as soon as possible." Id. He enclosed a copy of the medical certificate denial form he had sent to the FAA. Dr. Hudson received no reply, nor was the letter returned. On February 23 and 26, 1996, respondent was the pilot in command of two passenger-carrying flights. These facts are not in dispute.

Respondent testified before the law judge that he did not interpret what Dr. Hudson said to him as meaning that he was grounded, only that Dr. Hudson told him not to fly and that Dr. Hudson didn't want him to fly. Tr. at 129-131. He denied receiving Dr. Hudson's January letter.⁵ He knew that Dr. Hudson would not issue him a new medical certificate but claims to have believed that his old certificate was good until May, regardless of his condition.

Although respondent challenges the law judge's findings of fact, these challenges go to the law judge's credibility analysis, an analysis we will not likely overturn. Administrator v. Smith, 5 NTSB 1560, 1563 (1987), and cases cited there

⁵ He admitted that he had not given the FAA his new address, but that he had made arrangements to have mail forwarded to his new address and that the letter of investigation had reached him. Tr. at 139-141.

(resolution of credibility issues, unless made in an arbitrary or capricious manner, is within the exclusive province of the law judge). Respondent offers no compelling reason to overturn the law judge's finding that Dr. Hudson was the more reliable witness.⁶ Further, respondent's "understanding" that, despite his medical emergency, he was aware of no regulatory reason he could not fly until May 1 (when, on the face of it, his medical certificate expired) borders on the incredible. Under such a theory, no medical condition, no matter how incapacitating, would ground a pilot until the FAA issued a revocation order or an existing medical certificate expired.

Further, contrary to respondent's allegation, the Administrator need not *conclusively* prove that, on the dates of the flights, respondent had a known medical deficiency. The Administrator introduced evidence that on the days of the flights respondent's treatment plan still required that he take four medications to control his atrial arrhythmia. A doctor's conclusion in *April* that he was fit to fly (regardless of the value of that document as proof of a change in respondent's condition) is not evidence that he was fit to fly in *February*.

Finally, we reject respondent's arguments that the sanction is excessive. Respondent's years of flying do not serve to mitigate the sanction. The law judge found that, before he could

⁶ The law judge further found that respondent was on notice that he was not to fly, but that he chose to fly with a known medical deficiency because he "felt good." Tr. at 163-164.

fly again, respondent knew he needed a favorable evaluation of his heart's condition. Further, respondent has offered no grounds to conclude that, in February when he made the flights at issue, he had reason to believe his condition had resolved itself. Although respondent contends the sanction is too severe, he offers no case authority to support his position. Respondent is charged with knowledge of the Federal Aviation Regulations. Setting aside the fact that Dr. Hudson adequately apprised respondent of his situation, the FAA had no obligation to give him specific notice that he could not fly. Under the circumstances, we agree with the law judge that respondent "put his own desires above aviation safety" (Tr. at 167) and, as such, does not possess the qualifications required of a certificate holder.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The initial decision revoking respondent's airman certificate(s) is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.